555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES
Abu Dhabi, Barcelona, Brussels, Chicago, Doha, Dubai, Frankfurt, Hamburg, Hong Kong, London, Los Angeles, Madrid, Milan, Moscow, Munich, New Jersey, New York, Northern Virginia, Orange County, Paris, Rome, San Diego, San Francisco, Shanghai, Silicon Valley, Singapore, Tokyo, Washington, D.C.

October 24, 2008

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20054

Re: Notice of Ex Parte Presentation, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45

Dear Ms. Dortch:

On October 23, 2008, on behalf of Toyota Motor Sales USA, Inc. ("Toyota"), I spoke by telephone with Amy Bender, Legal Advisor to Chairman Martin; Nick Alexander, Legal Advisor to Commissioner McDowell; and Greg Orlando, Legal Advisor to Commissioner Tate, regarding proposed changes to the universal service contribution methodology and their adverse impact on providers and consumers of telematics services. I also spoke on October 24, 2008 with Scott Bergmann, Senior Legal Advisor to Commissioner Adelstein, and Scott Deutchman, Legal Advisor to Commissioner Copps, regarding the same issues.

This letter summarizes and expands upon the matters discussed on these telephone calls. Toyota is deeply concerned about the prospect that providers of telematics services might become subject to a flat monthly universal service assessment of $1.00 per assigned number (or $.85, as AT&T and Verizon recently proposed), in lieu of the extremely low charges that apply today based on interstate minutes of use. Toyota and other telematics service providers deliver vital public safety benefits to American motorists. The unrebutted record in these proceedings already establishes that those benefits would be jeopardized by a dramatic increase in universal service contribution obligations.[1] Moreover, imposing a flat monthly charge of $1.00 or more in connection with Toyota's telematics services—which would exceed the total interstate

---

1 *See, e.g.*, *Ex Parte* Letter of ATX Group, Inc. (Apr. 19, 2006); *Ex Parte* Letter of Mercedes-Benz USA, LLC (Apr. 12, 2006); *Ex Parte* Presentation of OnStar Corporation (Mar. 28, 2006).

telecommunications revenues associated with those services—would contravene Section 254(d) of the Act and settled judicial precedent. Toyota therefore urges the Commission to refrain from imposing dramatically increased universal service fees on providers and consumers of telematics services. Specifically, the Commission either should continue to assess minutes of use associated with telematics services under its existing revenue-based methodology, or adopt an alternative flat-rate assessment for telephone numbers used in the provision of telematics services that is comparable to existing revenue-based charges (*i.e.*, a monthly charge of approximately $.01 per assigned number).

The Commission has recognized the substantial public interest benefits associated with telematics services.[2] In particular, telematics services play a vital role in enhancing public safety by, among other things, automatically detecting vehicle crashes and airbag deployments, enabling vehicle occupants to make emergency contact with a trained operator who can direct calls to a Public Safety Answering Point, and using GPS technology to ascertain the location of a vehicle. These services are available for a low monthly charge, and Toyota's experience (supported by basic economic theory and common sense) indicates that substantial price hikes—as would be required by significant increases in regulatory assessments—would suppress demand for such services.

Toyota's next-generation telematics services, which will be introduced next year,[3] will not entail any offering of personal calling features (rather, users only will be able to reach the call center). Accordingly, that offering will constitute an information service only and would not be directly subject to universal service contribution requirements under the Commission's existing rules. But Toyota will continue to rely on an underlying Commercial Mobile Radio Service provider (and must assign a telephone number to each subscriber's vehicle) in order to connect vehicle occupants to the emergency call center. As a result, barring changes to the contribution methodology, Toyota would remain subject (indirectly) to small USF fees based on its purchase of interstate telecommunications services.

In particular, Toyota's current USF costs on a per-user basis amount to less than *one cent* per month. For obvious reasons, an increase to $1.00 per user under a numbers-based assessment—*i.e.*, an increase of *more than 10,000 percent*—would threaten Toyota's ability to continue providing telematics services and the corresponding consumer benefits they deliver. Indeed, a $1.00 (or $.85) per-number monthly charge would exceed Toyota's entire monthly payment for telecommunications services on a per-user basis (let alone its payment for *interstate* telecommunications services). Such an assessment not only would be grossly disproportionate and unfair as a policy matter, but it would plainly violate the statutory prohibition against inequitable or discriminatory assessments.[4] Indeed, an assessment that exceeds the cost of interstate usage—which provides the statutory basis for imposing USF fees in the first place—is

---

2 *See, e.g.*, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340, ¶ 72 (2003) ("*E-911 Order*").

3 Toyota currently resells telematics services provided by OnStar.

4 *See* 47 U.S.C. § 254(d).

precisely the error that caused the U.S. Court of Appeals for the Fifth Circuit to remand the Commission's previous approach to assessing international revenues (based on a similarly disproportionate impact on certain providers with minimal interstate usage).[5]

The fundamental differences between Toyota's next-generation telematics services and telecommunications services further underscore the impropriety of subjecting Toyota to a $1.00 or $.85 per-number USF assessment. As noted above, Toyota will provide only information services. Unlike telecommunications carriers, telematics service providers make only incidental use of the Public Switched Telephone Network, in Toyota's case for the sole purpose of connecting subscribers to a call center. Thus, Toyota's subscribers will be unable to receive calls from or place calls to landline or mobile telephones. Indeed, Toyota's telematics subscribers are forecasted to use only two minutes of airtime each month, on average. Telematics service providers also are ineligible to receive universal service support. Imposing a flat charge on a telematics service provider that is the same charge imposed on a common carrier provider of telecommunications services, despite the critical differences between these two types of entities, would be arbitrary and capricious.[6]

Finally, the recent suggestion by AT&T and Verizon that exemptions from a monthly per-number charge might be appropriate—but only if the customer is required to "pay[] the full TN Charge per number" and then seek "reimbursement of a certain portion of its paid USF charge" from USAC[7]—would be completely untenable. This proposal, which suggests that "special hardship" or some other vague standard might determine the availability of reimbursement,[8] would make it impossible for entities like Toyota to develop a workable business plan, because they would not know in advance whether monthly USF charges would erode their operating margins. Indeed, such an uncertain, post-hoc reimbursement process would fly in the face of Congress's direction that universal service mechanisms be "specific" and "predictable."[9] Moreover, even if the Commission were to make clear up front that telephone numbers assigned to providers of telematics services are exempt from a $1.00 or $.85 per-number monthly charge, it would be nonsensical to require customers (such as providers of telematics services, which are customers of CMRS providers) to make monthly submissions to USAC seeking reimbursement. The administrative burdens of such a scheme would far outweigh any purported benefits. Rather, an exemption would be far simpler to administer if a telematics service provider simply were to certify (under penalty of perjury, if necessary) that it qualifies for the Commission-approved exemption, obviating the need for imposing numbers-

---

5 *See Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 434 (5th Cir. 1999).

6 *See, e.g.*, *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (holding that an agency must "justify its failure to take account of circumstances that appear to warrant different treatment for different parties").

7 Letter of Mary L. Henze, AT&T Services, Inc. and Kathleen Grillo, Verizon, to Marlene H. Dortch, WC Docket No. 06-122 and CC Docket No. 96-45, at 4 (Oct. 20, 2008) ("AT&T/Verizon October 20 Ex Parte").

8 *Id.* at 5 n.5.

9 47 U.S.C. § 254(d).

LATHAM&WATKINS LLP

based USF charges in the first place. AT&T and Verizon self-servingly propose such a "self-identification" process in the context of wholesale services,[10] and there is no reason to depart from that approach in administering exemptions for customers such as providers of telematics services.

In sum, telematics services should be carved out from any numbers-based USF payment regime (or subject to an alternative flat charge that maintains existing contribution levels). The public interest will not be served—and indeed, will be affirmatively undermined—by harming consumers of telematics services and stifling the deployment of lifesaving telematics offerings.

Please contact the undersigned if you have any questions regarding this letter.

Sincerely,

/s/ Matthew A. Brill

Matthew A. Brill
of Latham & Watkins LLP
Counsel for Toyota Motor Sales USA, Inc.

---

10 AT&T/Verizon October 20 Ex Parte at 4.